Richman v. Native Village of Selawik, 2023 WL 3764599 (D. Alaska, June 1, 2023).

- Holding: Federal court lacked jurisdiction to hear challenges, under 25 U.S. § 1303 and 28 U.S.C. § 1331, to tribal court's order awarding custody of minor, an enrolled tribal member, to maternal grandmother.

- **Summary**: C.R was placed in the non-Native Petitioner's care after the murder of C.R.'s mother by C.R.'s father. C.R.'s mother was an enrolled member of the Native Village of Selawik ("Selawik"), and the Selawik Tribal Court, after a status hearing, granted the Petitioner temporary custody of C.R. Petitioner filed for adoption of C.R. in Alaska Superior Court, which petition was dismissed after the superior court concluded that the Selawik Tribal Court had exclusive jurisdiction.

  Petitioner, after first unsuccessfully attacking the tribal court's jurisdiction, asked the Selawik Tribal Court to allow her to adopt C.R. The tribal court ordered that custody be transferred to C.R.'s maternal grandmother (presumably enrolled as a Selawik tribal member). Selawik then moved to register the custody order with the Superior Court, which declined to enforce the custody order, holding that Selawik failed to afford Petitioner a full opportunity to be heard and that the Selawik Court was not impartial in issuing the Custody Order.

  Petitioner filed a petition of habeas corpus with the federal district court, asserting federal jurisdiction under ICRA, 25 U.S.C. § 1303, which provides that "[t]he privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of [their] detention by order of an Indian tribe." Petitioner alleged that Selawik illegally detained C.R. by issuing the Custody Order. Petitioner separately asserted federal question jurisdiction under 28 U.S.C. § 1331.

  Selawik moved to dismiss the Petition for lack of subject matter jurisdiction, making both a facial and factual attack on jurisdiction. Alternatively, it moved to dismiss for failure to state a claim.

  The court granted the motion to dismiss, finding that habeas relief is not available to attack a tribal court custody order, because 25 U.S.C. § 1303 limits habeas relief to actions testing "detention" by a tribe, and custody orders do not "detain" children. The court suggested that a narrow exception *may* apply when a state custody order conflicts with a tribe's custody order, but did not reach the issue because here the state superior court had "declined to exercise jurisdiction over C.R.'s custody case, finding that Selawik had primary jurisdiction and directing the parties to litigate the matter in Selawik Court." The fact that the superior court had declined to register the tribal court's custody order and had delegated to Petitioner the right to act as C.R'.s attorney-in-fact did not create the necessary conflict because it "was not a state custody decree."

  Additionally, the court rejected Petitioner's assertion that a question of federal law was presented under 28 U.S.C. § 1331. Petitioner cited *National Farmers Union Insurance Co. v. Crow Tribe* for the proposition that "a [f]ederal court has jurisdiction to review the exercise of tribal court jurisdiction over non-tribal members," but the court found that *National Farmers Union* did not apply, since it was undisputed that C.R. was enrolled as a member of the Native Village of Selawik. The court held that "while federal question jurisdiction may exist to review a tribe's jurisdiction over non-members, it does not exist

to review a tribe's civil jurisdiction over its own citizens, second-guess tribal membership decisions, or intervene in tribal child custody proceedings."

To the extent that Petitioner alleged that her procedural due process rights were deprived by the Selawik Tribal Court in violation of 25 U.S.C. § 1302(a)(8), the court held that under the holding in *Santa Clara Pueblo v. Martinez*, it lacked jurisdiction to hear claims against the tribe or its officers, because "Congress understood that tribal courts were best suited for adjudicating those claims," with " habeas relief under § 1303 the only federal remedy for ICRA."

- **Relevant (2023) Deskbook Sections**: 6:4, 7:4, 13:6
- **Comment**: The basis for the state superior court's initial determination that the Selawik Tribal Court had exclusive jurisdiction over custody determinations is unclear, given that C.R. neither resided in, nor was domiciled in, the Native Village of Selawik, and before her murder, C.R.'s mother had left the Village with no intention of returning.